

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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# FILE COPY

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

DAVID S. ROWE, M.D.,  
RESPONDENT.

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FINAL DECISION  
AND ORDER

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

David S. Rowe, M.D.  
426 Mc Millen St.  
Fort Atkinson, WI 53538

Wisconsin Medical Examining Board  
P.O. Box 8935  
Madison, Wisconsin 53708-8935

Department of Regulation & Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, Wisconsin 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

## FINDINGS OF FACT

1. David S. Rowe, M.D., date of birth December 10, 1942, is a physician duly licensed and currently registered to practice medicine and surgery in the state of Wisconsin, pursuant to license number 20591, which was issued January 21, 1977.
2. That immediately prior to April 19, 1991, Respondent was engaged in the active practice of medicine and surgery in the State of Wisconsin.
3. That on April 19, 1991, police authorities executed a search warrant at Respondent's office in Fort Atkinson, Wisconsin and conducted consensual searches of Respondent's office in Edgerton, Wisconsin and Respondent's residence in Milton, Wisconsin. As a result of the searches they arrested Respondent on charges related to the illegal possession of cocaine.
4. That on April 20, 1991, Respondent was self-admitted to the McBride Impaired Professionals Program at Milwaukee Psychiatric Hospital in Wauwatosa, Wisconsin for drug and alcohol treatment.

5. That on May 9, 1991, Respondent was discharged from inpatient status at Milwaukee Psychiatric Hospital to the McBride Program Herrington Recovery House extended residential treatment program, with discharge diagnoses of:

- a. Cocaine dependence, continuous, severe.
- b. Sedative dependence, continuous.
- c. Rule out alcohol dependence.

6. Following Respondent's transfer to the McBride Program's Herrington Recovery House, Respondent has participated in and cooperated with the McBride Impaired Professionals treatment program.

7. That on July 3, 1991, Respondent was found guilty of possession of a controlled substance (cocaine) under sec. 161.41(3), Wis. Stats. Pursuant to the provisions of sec. 161.47, Wis. Stats., the Court withheld entry of a judgment of guilt, deferred further proceedings, and placed Respondent on probation for a period of two years. In the event that Respondent fulfills the terms and conditions of probation, the Court will dismiss the criminal proceedings against him.

8. The conditions of Respondent's probation include that Respondent shall:

- a. Forfeit a vehicle valued at \$18,000.
- b. Pay \$3,402 in fines, assessments, costs and costs of investigation.
- c. Participate in and cooperate with drug and alcohol treatment.

#### CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stats., Sec. 448.02(3).

2. The Wisconsin Medical Examining Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stats., Sec. 227.44(5).

3. That Respondent's conduct in practicing medicine during a period of time while Respondent was also actively abusing cocaine and sedatives, constitutes unprofessional conduct as defined by Wis. Stats., sec. 448.02(3) and Wis. Adm. Code MED 10.02(2)(i).

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Stipulation of the parties is approved.

IT IS FURTHER ORDERED that the license to practice medicine and surgery in the State of Wisconsin of David S. Rowe, M.D. is hereby suspended until April 20, 1996, which is a period of 5 years from the date Respondent entered treatment.

IT IS FURTHER ORDERED that the SUSPENSION shall be STAYED upon Respondent's compliance with the following conditions during the period of the suspension:

1. The medical director of the McBride Impaired Professional Program shall be Dr. Rowe's supervising physician throughout the full term of these conditions. In the event that the medical director is unable or unwilling to serve as supervising physician, the Medical Examining Board shall, in its sole discretion, select a successor supervising physician, giving due consideration to Dr. Rowe's geographical location.

2. Dr. Rowe shall continue in and fully participate in all components of the treatment program, as his supervising physician shall determine to be appropriate for his rehabilitation. Dr. Rowe shall comply with all recommendations of his supervising physician for inpatient or outpatient treatment or both, and shall comply with all aspects of the treatment program as recommended by his supervising physician. All costs of the recovery program shall be the responsibility of Dr. Rowe or his health insurer.

3. Dr. Rowe shall abstain from any and all personal use of controlled substances as defined in Wis. Stats., sec. 161.01(4), except when necessitated by a legitimate medical condition and then only with the prior approval of the supervising physician.

4. Dr. Rowe shall abstain from any and all personal use of alcohol.

5. Dr. Rowe shall report all medications and drugs, over-the-counter or prescription, with the exception of aspirin and acetaminophen taken by him to his supervising physician within 24 hours of ingestion or administration and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs for him. The terms of this subparagraph shall not be deemed to modify or negate Dr. Rowe's obligations as set forth in subparagraph (3) of this Order.

6. Dr. Rowe shall supply, on at least a weekly basis, random monitored urine or blood specimens within 24 hours of a request for said specimen made by the supervising physician or his designee. The supervising physician or his designee shall determine whether the specimen shall be a urine specimen or a blood specimen or both. Collection of these specimens shall be observed and verified by persons designated by the supervising physician. Collection and all testing of specimens shall be the financial responsibility of Dr. Rowe or his health insurer.

7. If any urine or blood specimen is positive or suspected positive for any controlled substance or alcohol, the specimen shall be re-examined using gas chromatography as a confirmatory test.

8. If any urine or blood specimen is positive or suspected positive for any controlled substance or alcohol, Dr. Rowe shall promptly submit to additional tests and examinations as the supervising physician or his designee shall determine as appropriate to clarify or confirm the positive or suspected positive urine or blood test results.

9. The supervising physician shall submit formal written reports to the Wisconsin Medical Examining Board every 90 days after the date of this Order. The report shall assess Dr. Rowe's progress in his rehabilitation program and set forth the results of the random urine and blood screens. Dr. Rowe shall be responsible for the timely filing of these reports. The supervising physician and Dr. Rowe shall report immediately to the Wisconsin Medical Examining Board any suspected violation of this Order including, but not limited to, any positive or suspected positive blood or urine screens.

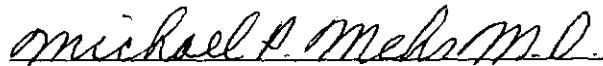
10. Dr. Rowe shall provide and keep on file, with his supervising physician and all treatment facilities and personnel, current releases which comply with state and federal laws authorizing release of all of his medical and treatment records and reports to the Wisconsin Medical Examining Board and permit his supervising physician and his treating physicians and therapists to disclose and discuss the progress of his treatment and rehabilitation with the Wisconsin Medical Examining Board. Copies of said releases shall be filed simultaneously with the Wisconsin Medical Examining Board.

11. Dr. Rowe shall appear before the Wisconsin Medical Examining Board at least annually to review the progress of his treatment and rehabilitation. Dr. Rowe may petition the Wisconsin Medical Examining Board for modification of the conditions of this Order. Denial of the petition, in whole or in part, shall not be considered a denial of a license within the meaning of Wis. Stats., sec. 227.01(3)(a) and Dr. Rowe shall not have a right to any further hearings or proceedings on any denial, in whole or in part, of his petition for modification.

12. Violation of any term or condition of this Order may constitute grounds for revocation of Dr. Rowe's license to practice medicine and surgery in the State of Wisconsin. Should the Board determine that there is probable cause to believe that Respondent has substantially violated the terms of this Order, the Board may order that Respondent's license be summarily suspended pending investigation of the alleged violation.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin this 25th day of September, 1991.

  
\_\_\_\_\_, Secretary  
Wisconsin Medical Examining Board

JRZ:vec  
ATY2-923

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
DAVID S. ROWE, M.D.,	:	
RESPONDENT.	:	

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It is hereby agreed and stipulated, by and between, David S. Rowe, M.D., Respondent; Stephen M. Glynn, of Shellow, Shellow and Glynn, attorneys for Respondent; John R. Zwieg, attorney for the Department of Regulation and Licensing, Division of Enforcement; and, the Wisconsin Medical Examining Board, as follows:

1. David S. Rowe, M.D., Respondent, date of birth: December 10, 1942, is a physician currently licensed and registered to practice medicine and surgery in the State of Wisconsin; that his license, which bears number 20591, was granted January 21, 1977; that his last address reported to the Wisconsin Department of Regulation and Licensing is 426 Mc Millen St., Fort Atkinson, WI 53538.

2. That on April 22, 1991, Respondent, through his attorneys, contacted the Department of Regulation and Licensing, Division of Enforcement, for the purpose of reporting that Respondent had been arrested by the Jefferson County Sheriff's Department and would be charged with illegal possession of cocaine.

3. That based upon the report from Respondent's attorneys, the Division opened investigative file 91 MED 158.

4. That the Division of Enforcement and the member of the Board appointed as the investigative advisor in this matter have reviewed all police reports, the Jefferson County District Attorney's file and Respondent's treatment records.

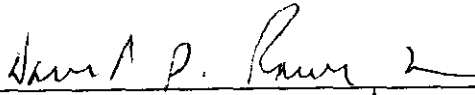
5. Respondent agrees that the attached Findings of Fact, Conclusions of Law, and Order may be made and entered without further notice to any party.

6. The attorneys for the parties may appear before the Wisconsin Medical Examining Board to argue in favor of acceptance of this Stipulation and the entry of the attached Final Decision and Order.

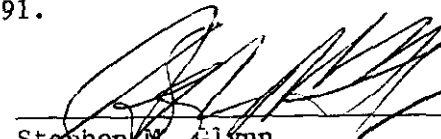
7. In the event that the Wisconsin Medical Examining Board does not accept this resolution of this matter, the Stipulation and Final Decision and Order shall be void and of no effect and the parties agree not to contend that

the Board has been biased in any manner by the submission of this proposed resolution to the Board.

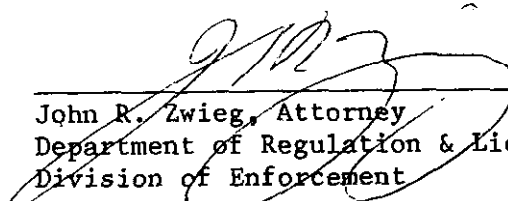
Dated this 29 day of August, 1991.

  
David S. Rowe, M.D., Respondent

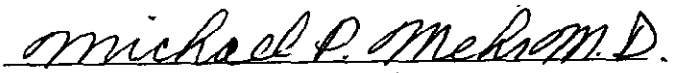
Dated this 26<sup>th</sup> day of August, 1991.

  
Stephen M. Glynn  
Shellow, Shellow and Glynn  
Attorneys for Respondent

Dated this 12<sup>th</sup> day of August, 1991.

  
John R. Zwieg, Attorney  
Department of Regulation & Licensing  
Division of Enforcement

Dated this 25th day of September, 1991.

  
\_\_\_\_\_, Secretary  
Wisconsin Medical Examining Board

JRZ:vec  
ATY-1694

## **NOTICE OF APPEAL INFORMATION**

**(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each, and the identification  
of the party to be named as respondent)**

**The following notice is served on you as part of the final decision:**

### **1. Rehearing.**

**Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Medical Examining Board.**

**A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.**

### **2. Judicial Review.**

**Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Medical Examining Board**

**within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.**

**The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Medical Examining Board.**

**The date of mailing of this decision is September 30, 1991.**



**227.49 Petitions for rehearing in contested cases.** (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

**227.52 Judicial review; decisions reviewable.** Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

**227.53 Parties and proceedings for review.** (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions

for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.